

Sharla Dillon - Request for Two new Docket Numbers

From: David McClanahan
To: Dillon, Sharla
Date: 12/03/2002 9:50 AM
Subject: Request for Two new Docket Numbers
CC: Gilliam, Randal; McCormac, Dan

I would like to request two new docket numbers for petitions from Nashville Gas Company for extension contracts between State Industries, Bridgestone/Firestone Industries, and Piedmont Natural Gas Company doing business as Nashville Gas Company.

1. Request a Docket No. for: Nashville Gas Company Application of Extension of Negotiated Gas Redelivery Agreement with State Industries. Formerly Docket No. 98-00338.
2. Request a Docket No. for: Nashville Gas Company Application of Extension of Negotiated Gas Redelivery Agreement with Bridgestone/Firestone Industries. Formerly Docket 98-00339.

Thanks for your help.

LAW OFFICES
Nelson Mullins Riley & Scarborough, L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP

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November 26, 2002

VIA FEDERAL EXPRESS

The Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: Nashville Gas Company Application for Approval of Negotiated Gas
Redelivery Agreement with State Industries
Docket No. ~~98-00338~~

02-01270

Dear Chairman Kyle:

By Order issued January 22, 1999, in the above-captioned docket, the Tennessee Regulatory Authority approved the provision of natural gas service by Nashville Gas Company ("Nashville") to State Industries pursuant to a Negotiated Gas Redelivery Agreement ("Contract"). That Contract is currently slated to expire on December 31, 2002. The underlying justification for the Authority's approval of this Contract was the threat of bypass, a condition that persists in the ongoing provision of service to State Industries. In light of the pending expiration of the existing Contract and the ongoing threat of bypass by this customer, Nashville and State Industries have negotiated an extension of the term of the existing Contract and have executed a revised agreement setting forth this extended term and incorporating several other non-material changes to the original Contract.

The specific changes to the previously approved Contract reflected in the revised agreement are as follows:

1. An extension of the effective term of the agreement until December 31, 2007 in Section 3.01.
2. An update of the initial Volumetric Charge in Section 2.01 to reflect the current Volumetric Charge now in effect under the existing Contract (this is not a change to the current terms of service between Nashville and State Industries but is necessitated by the escalating nature of the Volumetric Charge mechanism contained in the previously approved Contract).

Honorable Sara Kyle
November 26, 2000
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3. The deletion of several surcharge provisions in Sections 2.04 and 2.05 that are no longer applicable to service to State Industries and a conforming change in Section 3.03.
4. A change in the contact information for Nashville and State Industries in Section 12.01.

The net effect of these changes will be to continue service to State Industries under the same terms and conditions as are currently applicable to that service. All other provisions of the previously approved Contract remain unchanged.

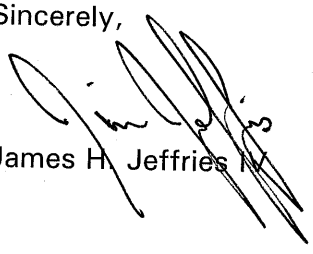
The purpose of this filing is to present the revised version of this previously approved Contract to the Authority pursuant to TRA Rule 1220-4-1-.07 and to request that any approval necessary to implement this revised agreement be granted no later than December 31, 2002.

In order to assist the Authority in its evaluation of the changes made from the prior Contract, I have enclosed an original and a red-lined copy of the new agreement. Because these versions of the new agreement contain confidential and commercially sensitive information, they are being filed in a separate envelope and marked as "proprietary information."

I am also enclosing an original and fourteen copies of this letter (including versions of the clean and red-lined new agreement redacted to eliminate confidential information) as well as a check in the amount of \$25.00 to cover the required filing fee. Please accept the original and thirteen copies of these documents for filing and return one file-stamped copy to me in the enclosed self-addressed and stamped envelope.

If you have any questions regarding this filing, you may reach me at the number shown above.

Sincerely,


James H. Jeffries IV

JHJ/srl

Enclosure

c: All Parties of Record

STATE INDUSTRIES INC.

GAS REDELIVERY AGREEMENT

This Gas Redelivery Agreement is made and entered into this the, _____ day of October 2002 by and between Piedmont Natural Gas Company, Inc. (Piedmont) and State Industries Inc. (Customer).

WITNESSETH

Whereas, Customer is an existing natural gas customer of Piedmont receiving both firm and interruptible service.

Whereas, Customer desires to acquire third party gas supplies, transport, or cause to have transported said supplies through interstate pipeline facilities to Piedmont's Nashville interconnection with Tennessee Gas Pipeline Company (TGP) at meter station No. 2-0312, (Delivery Point), and have Piedmont redeliver such supplies through Piedmont's natural gas distribution system (the "Service Line") to Customer's Ashland City, Tennessee manufacturing plant (the "Facility") for the requirements of its historically "interruptible" load.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I

Scope of Agreement

Section 1.01 Subject to the terms, conditions and limitations of this Agreement, Piedmont agrees to accept a Maximum Daily Quantity (MDQ) of up to [REDACTED] dt per day of natural gas tendered for delivery for Customer's account at the inlet flange of the Delivery Point and redeliver such natural gas to Customer at the outlet flange of Piedmont's facilities located at the Redelivery Point for the requirements of its historically "interruptible" load. Customer agrees to accept redelivery of such natural gas at the Redelivery Point.

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Section 1.02 Piedmont shall make available a quantity of gas (up to [REDACTED] dt/day) at the Facility (as measured at the meter installed at the Redelivery Point) equal to the quantity of gas received into the Service Line at the Delivery Point for customer's account, less the quantity of gas which may be due to line lost, normal operation, maintenance and repair as provided for in Piedmont's Rate Schedule 7I, as the same may be amended or suspended from time to time.

Section 1.03 Should Customer wish to receive daily redeliveries exceeding [REDACTED] dt per day, Customer may request such increase from Piedmont, and subject to capacity and operational limitations, Piedmont will attempt to provide such increase in daily deliveries to Customer at a rate of [REDACTED] per dt. Should Customer wish to increase the MDQ entitlements Customer may request such increase from Piedmont, and subject to capacity and operational limitations, Piedmont will attempt to provide such increase in MDQ entitlements with a pro rata percentage increase to the Monthly Demand Charge.

Section 1.04 The service provided to the historically "interruptible" load under this Agreement shall be firm redelivery; however, Piedmont shall be entitled to curtail or interrupt service under this Agreement when absolutely necessary to permit Piedmont to maintain, construct, test, rehabilitate, or repair its pipeline or other appurtenant facilities in order to keep such facilities in good and safe operating condition or when required by an event of force majeure, or when required under the applicable rules of the Tennessee Regulatory Authority (TRA) or other governmental agency that has jurisdiction over Piedmont's facilities or the service provided under this Agreement.

Section 1.05 Piedmont shall, at its sole cost and expense, maintain the Service Line in good condition and repair and in such way as to minimize any interruption of operation of the Service Line to the Facility. All maintenance, repairs and testing of the Service Line shall be performed with due care and skill, in accordance with the terms and conditions of this Agreement and the then current industry standards. Except where otherwise necessitated by an emergency, Piedmont shall make a reasonable effort to give Customer at least thirty (30) days

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written notice prior to such time as Piedmont desires to perform any maintenance and/or repair work which will interfere with the operations of the Service Line to the Facility or require a suspension of such operations together with a reasonable estimate of the term of the suspension (the "Scheduled Suspension Period"). Emergency maintenance or repairs requiring the interference with or suspension of such operations shall be performed as necessary in the professional judgment of Piedmont, and Piedmont shall provide the earliest practicable notice to Customer which is reasonable under the circumstances. Maintenance or repairs requiring the suspension of Service Line operations shall be performed as expeditiously as possible and, where applicable, within the Scheduled Suspension Period. Whenever service is suspended due to maintenance, repairs or other actions within the control of Piedmont, Customer's liability to pay Monthly Demand Charges shall be prorated to account for the duration of the service suspension.

ARTICLE II

Rate

Section 2.01 For the service under this Agreement, Customer will pay Piedmont each month during the term of this Agreement the sum of the following amounts:

- A. For every month of the year,
 - 1. A Monthly Demand Charge of [REDACTED] per month and,
 - 2. The Volumetric Charge shall be [REDACTED] per dekatherm during each of the first 12 months of this Agreement. The Volumetric Charge shall increase annually by [REDACTED] per dekatherm at the beginning of each subsequent 12 month period of this Agreement.

Section 2.02 In addition to the Rate, the Customer will pay Piedmont each month an additional amount sufficient to permit Piedmont to recover any franchise or similar fees or taxes, other than income taxes, imposed by the City of Ashland City or other state or federal governmental authority having jurisdiction on Piedmont as a result of the transportation of gas

for Customer under this Agreement.

Section 2.03 Piedmont and Customer agree that the Rate for gas service under this Agreement is subject to change from time to time by the Tennessee Regulatory Authority (TRA). Piedmont and Customer agree that during the term of this Agreement neither party will request the TRA to change the Rate.

ARTICLE III

Term of Agreement

Section 3.01 Subject to the terms and conditions herein, this Agreement shall become effective January 1, 2003, or, if later, the first of the month following TRA approval, and shall continue in effect until December 31, 2007.

Section 3.02 Not later than March 1, 2006, the parties will commence negotiations in good faith toward mutually agreeable terms and conditions for an extension of this Agreement.

Section 3.03 Customer may terminate this Agreement in the event its Rate is increased or is made subject to any adjustment, surcharge or other fee (including the Franchise Fee) during the term of this Agreement. Such termination shall be effective by the provision of a written Notice of Termination by the Customer, specifying the reasons therefore and the effective date of the termination (which may not be prior to the day immediately preceding the date on which the increase, adjustment, or other fee becomes effective); provided that such Notice of Termination shall not cause the initial term or any agreed extension thereof to be extended.

Section 3.04 Piedmont may terminate this Agreement in the event Customer's Rate is decreased or in the event the TRA assigns any adjustments, surcharges, fees, costs or plant to Customer in such a manner that would cause Piedmont to earn a return on investment assigned to Customer that is less than its overall allowed return on its remaining utility investment in

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Tennessee. Such termination shall be effective by the provision of a written Notice of Termination by Piedmont, specifying the reasons therefore and the effective date of the termination (which may not be prior to the day immediately preceding the date on which the action authorizing such termination becomes effective); provided that such Notice of Termination shall not cause the initial term or any agreed extension thereof to be extended.

Section 3.05 Either party may terminate this Agreement upon thirty days' written notice in the event of a material breach of this Agreement by the other party; provided that if the breaching party cures such breach within the thirty day period, this Agreement shall not terminate but shall continue in full force and effect. This Section 3.05 shall not affect the right of the Customer to terminate this Agreement pursuant to the terms of Section 3.03 or the right of Piedmont to terminate this Agreement pursuant to the terms of Section 3.04.

Section 3.06 The termination of this Agreement shall not relieve the Customer of its obligation to pay for all services provided under this Agreement up to the time of termination.

Section 3.07 In the event service under this Agreement is terminated for any reason, Customer, at its option, may elect to take service under Piedmont's then existing rate schedule applicable to interruptible transportation service for large volume customers (currently Rate Schedule 7I); however, Piedmont is under no obligation to provide gas supplies for Customer. Piedmont will not be prohibited from providing unregulated services to Customer under market-based negotiated agreements between Piedmont and Customer.

ARTICLE IV

Regulatory Approval

Section 4.01 Performance under this Agreement by Piedmont and Customer shall be contingent upon Piedmont and Customer receiving all necessary regulatory or other governmental approvals upon terms satisfactory to each. In the event any such approvals are

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denied, Customer may elect to receive service under Piedmont's Rate Schedule 7I, as the same may be amended or superseded from time to time, by giving notice to Piedmont not later than November 1, 2002.

ARTICLE V

Quality and Pressure of Gas

Section 5.01 All gas delivered to Piedmont for Customer's account shall conform in all respect to the rules, guidelines, policies, practices and requirements of the transporting interstate pipeline (TGP), as may be changed and amended from time to time, with respect to units of measurement, measurement specifications, quality, heating value, testing specifications and delivery terms.

Section 5.02 All gas delivered to Piedmont for Customer's account shall be at sufficient pressure to enter Piedmont's system, and Piedmont shall have no obligation to provide compression prior to delivery to Customer. Piedmont agrees to maintain such pressure from the Delivery Point to the Redelivery Point less any pressure decrease reasonably attributable to the normal operation, maintenance and repair of the Service Line in accordance with the terms of this Agreement such that the current pressure delivered to the Plant is maintained.

ARTICLE VI

Title and Control of Gas

Section 6.01 Customer warrants that Customer will, at the time of receipt of the gas by Piedmont, have good title to all of the gas free and clear of all liens, encumbrances, and claims whatsoever. Title to the gas received by Piedmont for Customer's account hereunder shall remain with Customer during its transportation by Piedmont. Customer agrees to indemnify and keep Piedmont harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of adverse claims of any and all persons to the gas prior to its delivery to

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Piedmont for Customer's account. Piedmont agrees to indemnify and save Customer harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising out of adverse claims of any and all persons to the gas during its transportation by Piedmont for Customer's account.

Section 6.02 Piedmont shall be deemed to be in control and possession of Customer's gas upon receipt of such gas at the Delivery Point until it shall have been redelivered for Customer's account at the Redelivery Point, and Customer shall be deemed to be in control and possession of Customer's gas prior to such receipt and after such delivery for Customer's account. Piedmont shall have no responsibility with respect to Customer's gas or on account of anything done, occurring or arising with respect to such gas before receipt of such gas by Piedmont, or after redelivery of such gas for Customer's account and Customer shall have no responsibility with respect to Customer's gas or on account of anything done, occurring or arising with respect to such gas while such gas is in Piedmont's possession.

ARTICLE VII

Nominations and Imbalances

Section 7.01 Customer agrees to comply with the nomination, imbalance resolution, overrun and other delivery provisions set forth in Piedmont's TRA approved tariffs applicable to the transportation of gas to Piedmont's transportation customers under Rate Schedule 7F (as the same may be amended or superseded from time to time). Notwithstanding the foregoing, Customer has no right to request any gas supply service which may be expressed or implied in Piedmont's Rate Schedule 7F or by any other tariff service.

ARTICLE VIII

Billing and Payment

Section 8.01 Piedmont shall bill Customer for services rendered under this Agreement during the preceding calendar month.

Section 8.02 Customer shall pay Piedmont by check or electronic transfer of federal funds no later than twenty (20) days following the date of the invoice, except when such day is a Saturday, Sunday or bank holiday, in which case payment is due the following business day (hereinafter called the Due Date). In the event payment is by check, the check must be received by Piedmont by the Due Date.

Section 8.03 Payments received after the Due Date will be subject to a 5% penalty. In addition, payments received more than 30 days after the Due Date will be subject to interest at the rate of 1.5% per month.

Section 8.04 In the event an error is discovered in the amount billed in any statement rendered to Customer by Piedmont under this Agreement, such error shall be adjusted within thirty days of the determination thereof, provided that claim thereof shall have been made within sixty days from the date of discovery of such error and, in any event, within twelve months from the date of such statement.

Section 8.05 Each party hereto or its authorized representative shall have the right at all reasonable times to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement, charge, computation or demand made under or pursuant to this Agreement. Each party shall retain its records relating to this Agreement for a period of three years.

ARTICLE IX

Metering Facilities and Measurement

Section 9.01 The unit of measurement for the purpose of providing service under this Agreement shall be one (1) dekatherm (dt), consisting of one million (1,000,000) British Thermal Units. The number of units delivered shall be determined by multiplying the number of cubic feet of gas delivered by TGP's reported heating value of gas and by dividing the product by 1,000,000.

Section 9.02 Piedmont shall, at its expense, maintain, inspect, and operate metering facilities to measure Customer's gas received by Piedmont at the Delivery Point and redelivered to Customer at the Redelivery Point during the term of this Agreement in accordance with applicable industry standards. Customer may make a written request that Piedmont inspect and test any metering equipment at any reasonable time. If such metering equipment is determined to be registering within plus or minus 2%, Customer will pay all costs of the inspection and testing of the equipment.

Section 9.03 If a meter fails to register correctly, the amount of gas delivered during the period of such failure, if such period is reasonably ascertainable, shall be determined, in absence of a more accurate basis of data, by reference to other recent corresponding periods of use. If the period of failure is not ascertainable, it shall be assumed that such period of failure does not exceed the previous six(6) months. Thereafter, an equitable adjustment shall be made between the parties based upon the amount of gas actually delivered.

ARTICLE X

Access to Customer's Premises; Notice of Leakage

Section 10.01 Subject to Customer's reasonable security arrangements, Piedmont's authorized agents shall have, at all reasonable hours, the right of access to the Facility to examine

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and inspect meters and/or for other necessary purposes, and only Piedmont's authorized agents may inspect, repair or otherwise act upon any meter or other Piedmont property. For a period of thirty (30) days following termination of this Agreement, Customer authorizes Piedmont to remove Piedmont's meters and other property upon termination of this Agreement unless Customer shall be receiving service from Piedmont at the Facility under some other arrangement. Piedmont shall be liable to Customer for any damages to the Facility resulting from the negligence or willful misconduct of Piedmont's employees, agents, or representatives arising in connection with the exercise of its rights under this Section 10.01.

Section 10.02 Customer must give Piedmont immediate notice of the discovery of leakage of gas either prior to or beyond the Redelivery Point. Upon receipt of any such notice, Piedmont shall be authorized to shut off the flow of gas to the leak immediately. Piedmont shall not be liable for any damages and/or loss arising out of or caused by any leakage of gas beyond the Redelivery Point.

ARTICLE XI

Force Majeure

Section 11.01 If either party is rendered unable, wholly or in part, by force majeure (or any other cause which by the exercise of due diligence such party is unable to prevent or overcome) to carry out its obligations under this Agreement other than the obligations to make timely payment of amounts due hereunder, it is agreed that on such party's giving notice and reasonably full particulars of the reason for the force majeure or other such cause in writing or by fax to the other party within a reasonable time after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure or other cause, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch; provided however, that nothing herein shall release Customer from its obligation to pay, a) the Monthly Demand Charge, b) the Commodity Charge for any gas redelivered under this

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Agreement, or c) any other amount due for any services provided by the Piedmont to the Customer under this Agreement prior to the event of such force majeure.

Section 11.02 For the purpose of this Agreement, force majeure shall include acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy or terrorist, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, explosions, or accident to machinery or lines of pipe, or service line(s), inability to obtain or unavoidable delay in obtaining materials, supplies, equipment, permits or labor to perform or comply with any obligations or conditions this Agreement, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means or any other similar event beyond the control of a party hereto.

Article XII

Notices

Section 12.01. Any notice, request, demand, statement, payment or other correspondence shall be mailed, via registered or certified mail, to the post office address of each of the parties hereto, hereinafter stated, or to such other address as such party may hereinafter designate to the other in writing:

Customer

For Operational Matters:

Hicks Allen
500 Lindahl Parkway
Ashland City, TN 37015-1299

Phone (615) 792-6378

Fax (615) 792-2120

Patrick Bourke
500 Lindahl Parkway
Ashland City, TN 37015-1299

Phone (615) 792-6291

Fax (615) 792-2124

STATE INDUSTRIES INC.

For Legal Notices:

Patrick Bourke
500 Lindahl Parkway
Ashland City, TN 37015-1299

Phone (615) 792-6291
Fax (615) 792-2124

For Invoices and All Other Matters:

A.O. Smith Water Products Division
Attention: Accounts Payable
500 Lindahl Parkway
Ashland City, TN 37015-1299

Phone (615) 792-6268
Fax (615) 792-2140

Piedmont

For Operational Matters:

Manager Gas Control

Phone (704) 366-0309
Fax (704) 365-8740

For Contractual Matters

Chuck Fleenor
Piedmont Natural Gas Company, Inc.
P.O. Box 33068
Charlotte, North Carolina 28233

Phone (704) 364-3120
Fax (704) 364-8320

Legal Notices:

Office of the Secretary
Piedmont Natural Gas Company, Inc.
P.O. Box 33068
Charlotte, North Carolina 28233

Phone (704) 364-3120
Fax (704) 365-3849

ARTICLE XIII

Exclusivity

Section 13.01 In consideration of the Agreement described herein, during the term of this Agreement, Customer agrees to use Piedmont's facilities as the exclusive natural gas delivery service to the Facility. Notwithstanding anything contained herein to the contrary, the exclusivity provided by this Section 13.01 shall not apply to any period during the term of this Agreement during which Piedmont is unable to provide service to Customer at the Plant due to a force majeure event.

ARTICLE XIV

Assignment

Section 14.01 Subject to the terms and provisions hereof, either party may assign or transfer its rights hereunder, upon its giving written notice to the other party; provided, however that Piedmont shall not be required to provide any services to any assignee or transferee of Customer until such assignee or transferee has provided Piedmont with satisfactory evidence of its creditworthiness and provided further that Piedmont's approval of such assignee's creditworthiness shall not be unreasonably withheld.

ARTICLE XV

Miscellaneous

Section 15.01 Once this Agreement has been approved by the TRA, it shall contain the entire agreement between the parties. No change to this Agreement shall be enforceable unless in writing and signed by both parties.

Section 15.02 No waiver by either party of any default(s) by the other party in the performance of this Agreement shall operate or be construed as a waiver of any future default(s) of a like kind or different nature.

Section 15.03 This Agreement is subject to all present and future laws, orders, rules and regulations of any regulatory body having jurisdiction. This Agreement shall be construed,

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enforced, and performed in accordance with the laws of the State of North Carolina.

Section 15.04 The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization not a party or not bound as a party, or not as successor or assignee of a party bound to this Agreement.

Section 15.05 The Following Sections shall survive the termination of this Agreement according to their terms: 3.06, 6.01, 6.02, 8.01, 8.02, 8.03, 8.04, 10.01 and 12.01. **Section 15.06** For the life of this Agreement and for one year thereafter, Piedmont and Customer agree that the terms contained herein are of a confidential commercial nature, and that the terms of this Agreement, including but not limited to, the charges, the quantities and all other material terms of this Agreement shall be kept confidential except to the extent that any information must be disclosed for the purpose of effectuating redelivery, obtaining regulatory approval, or as required by law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date written below.

STATE INDUSTRIES INC.

By John E. Prewer Date 11-18-2002
CUSTOMER

PIEDMONT NATURAL GAS COMPANY, INC.

By [Signature] Date 11-19-2002
PIEDMONT